AFFORDABLE CARE ACT COMPLIANCE
Q & A Bulletin # 3 Dated 4/11/14

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Welcome to the Georgia Department of Administrative Services Affordable Care Act (ACA) Q&A Bulletin!

The Georgia Department of Administrative Services' Affordable Care Act Q&A Bulletin is intended to provide practical guidance to HR leaders in the State of Georgia Executive Branch agencies.

We hope that you find this new format of the April 2014 ACA Bulletin easier to navigate and that it allows you to obtain the answers to your questions more efficiently. This version of the Bulletin is an accumulation of all previous ACA questions and answers. You do not need to keep prior versions.

New sections include the Table of Contents, Terms and Definitions, and an Appendix. We recommend that you begin by clicking on the link to the Table of Contents to orient yourself to the different sections and to determine where the answers to your questions are contained. The Appendix contains all scenarios and decision trees for visual demonstrations of situations described in the Bulletin.

The following topics have been updated to reflect compliance with the ACA Final Regulations:

a. seasonal employees
b. rehired employees
c. working hours
d. clarification on unpaid interns/externs,
e. an exception for some types of paid internships which are exempt from the ACA

Please pay special attention to questions addressing these topics, as our answers to your questions have been updated accordingly.

This Bulletin will serve as our last update on a scheduled basis. We understand there may be additional questions as you continue with compliance assessments, and there may be operational issues that we have not contemplated. Please keep the lines of communication open by directing any questions to your assigned HRA consultant. If you do not know who your assigned HRA consultant is, please contact Jacqui Lindsay at 404-463-1284 or jacqui.lindsay@doas.ga.gov.

Terms and Definitions

The terms below are defined by the ACA Final Regulations and should be applied in all situations involving compliance with the ACA.

TERMS	DEFINITIONS
ADMINISTRATIVE PERIOD	The ACA defines the term administrative period as an optional period, selected by an applicable large employer member, of no longer than ninety (90) days beginning immediately following the end of a measurement period and ending immediately before the start of the associated stability period. The administrative period is intended to allow time to provide notice to employees of eligibility changes, to offer health coverage, and for employees to enroll in healthcare. The administrative period also includes the period between a new employee's start date and the beginning of the initial measurement period, if the initial measurement period does not begin on the employee's start date.
FULL-TIME EMPLOYEES	A full time employee is an employee working thirty (30) hours a week on average in one month, unless an employer uses a measurement period, then a full-time employee is an employee with work hours of thirty (30) hours a week on average during a measurement period.
FULL-TIME EQUIVALENT EMPLOYEES	Generally in determining whether an employer is an applicable large employer, the number of full time equivalent employees (FTEs) it employed during the preceding calendar year is taken into account. All employees (including seasonal workers) who were not employed on average at least thirty (30) hours of service per week for a calendar month in the preceding calendar year are included in calculating the employer's fulltime equivalent employees for that calendar month. To determine the number of FTEs for a particular month, the employer must add up the number of hours of service for all employees who were not employed for at least 30 hours on average per week for that month, then divide that number by 120. The result is the number of FTEs for that calendar month. All fractions are disregarded (for example, 49.5 full-time employees (Including FTEs) for preceding calendar year would be rounded to 49 employees).
LOOK BACK /MEASURMENT PERIOD	A look-back / measurement period is a period of time allowed under the ACA for an employer to determine whether an employee is considered a full time employee for purposes of the ACA. During the look-back / measurement period the employer monitoring the employee's hours of service for a period of time. At the end of the look-back / measurement period, the employer will average the employee's number of hours of service during that time period. This average will be used to determine whether the employee should be offered healthcare coverage. The State of Georgia will be using a 12 month standard look-back / measurement period. ➢ **Note**: The final regulations authorize large employers to use a look-back/measurement period for variable hour and seasonal employees to test their eligibility for healthcare. Therefore, the State's "hourly" employees that meet the definition of variable hour or seasonal employees (see definitions above) do not become immediately eligible to enroll in healthcare within 3 calendar months as other new employees do, even knowing they will work 30 or more hours per week for the season. This outcome results from using a 12 month look-back/measurement period which will most likely average the seasonal worker's hours as being less than 30 hours per week over the measurement period.
PARITY RULE EXEPTION	Employees with a break in service of less than 13 weeks may still qualify as a new hire if the individual's break in service was more than 4 weeks, and the break in service was longer in duration than the last employment period.

PART-TIME	A part-time employee is an employee reasonably expected to work less than thirty (30) on average during a measurement period. ➢ **Note:** There is no general definition for a temporary employee. The IRS refers to various temporary employment arrangements as "short-term" and has acknowledge consideration of whether they should issue further guidance regarding "short-term" employment arrangements. Unless and until the IRS issues such guidance, the most important change brought about by the ACA that you must understand is that healthcare eligibility is not tied to duration of employment, but to the number of hours an employee is anticipated to work weekly on average at the time of hire. There are two exceptions – variable hour or seasonal employment.
SEASONAL EMPLOYEES	The ACA defines seasonal employee in two ways: 1) First in the context of determining whether you are a large employer subject to the employer mandate provision of the ACA. See also Question 17 below. Employers with employees that work 120 or fewer days a year may subtract this number from their workforce count, if the employer is a large employer due only to seasonal employees. 2) The ACA provides a second definition of a seasonal employee for purposes of eligibility. In this context, seasonal employees are defined as those that typically work six months or less, and whose work begins at approximately the same time each year, such as winter or summer. In some instances, the employee may still be considered seasonal even if the seasonal employment period is extended in a particular year beyond its customary duration (regardless of whether the customary duration is six months or less than six months). An example of such an instance would be a ski instructor with a period of employment with a customary duration of six months, working a seventh month in a particular year due to an unusually long snow season. ➢ ***Note on change in employment status for seasonal employees***: The final regulations provide that if a seasonal employee experiences a change in employment status before the end of the initial measurement / look back period that transfers the seasonal employee into a permanent, full time (working 30 or more hours per week) position, the employer has to offer insurance within three calendar months following the change in employment status OR if the employee averaged 30 hours or more during the measurement / look back period, by the first day after the end of the initial measurement period's administrative period, whichever is shorter.
STABILITY PERIOD	Under the ACA, the term stability period means a period selected by an applicable large employer member that immediately follows, and is associated with, a standard look back / measurement period (and, if elected by the employer, the administrative period associated with that standard measurement period or initial measurement period). The Stability period is the period for which an employee's eligibility status is "locked" in. It must at a minimum be as long as the look-back / measurement period. Thus, if an employee is determined to be healthcare eligible using a 12 month look back / measurement period, then the employee must receive healthcare coverage for the 12 months following the administrative period – regardless of whether the employee's hours fall below the 30 hour a week average during the stability period.
VARIABLE HOUR EMPLOYEE	A new hire is a variable hour employee if at the time of hire you do not know whether the employee will work 30 hours a week on average, or you reasonably believe the employee will work 30 or more hours a week on average for a short period of time only, then work less than 30-hour weeks.

SECTION 1: GENERAL

1) Is the Affordable Healthcare Act relevant to my agency?

Most likely. The ACA requires employers with 50 or more full-time or full-time equivalent employees (referred to as a large employer) to offer full-time employees affordable healthcare coverage. A full-time employee is someone that works 30 hours or more a week on average in any month, or someone that works 130 hours in one calendar month.

For this initial threshold question about whether you are a large employer for purposes of the ACA, you will look at the prior calendar year, count full-time employees (using the ACA definition of at least 30 weekly hours, or the equivalent for salaried employees), pro-rate employees working less than 30 weekly hours to determine full-time equivalents, and exclude seasonal employees working 120 or fewer days from the count. Calculate the total for all business days in each month to derive your agency's *average* headcount for the year. If your agency operates 24/7 all days of the week are business days for you.

Example 1: Agency with 30 FLSA-exempt and nonexempt employees working 40 hours a week, 10 part-time employees working 20 hours a week, and 15 additional non-seasonal "hourly" employees working 30 or more hours a week has a workforce count of 51 full-time and full-time equivalent employees. (Calculation: 30+ 15 full-time employees + 10 part-time employees X 80hrs = 800 aggregate hrs. / 120 monthly full-time hrs. = 6 full-time equivalents = 51 total employees. Note: That by dividing by 120, just the first 120 hours of non-full-time employees count. Agency is a large employer subject to the ACA.

Example 2: Agency with 30 FLSA-exempt and nonexempt employees working 40 hours a week, 15 non-seasonal "hourly" employees working 30 or more hours weekly, and 25 seasonal employees working 30 or more hours weekly for a short period has a workforce count of 45 for most of the year. (Calculation: 30+15 = 45 total employees). Agency is not a large employer subject to the ACA. Because agency only becomes a large employer seasonally, employer may exclude seasonal employees from the count and will not be subject to ACA penalties.

Based on workforce totals in PeopleSoft, the ACA may impact all but five state employers. Please note that the answer in this question assumes each state agency is an individual employer, which is not addressed within the ACA for public sector entities and remains an open question. The DOAS HRA Division will work with the Attorney General's Office to determine if or when this interpretation should be modified.

2) What has changed for employees?

Effective January 2014 all individuals (with limited exceptions) must purchase health insurance after a 90-day grace period or pay a penalty of $95 or up to 1% of income, whichever is greater, progressing to $695 or up to 2.5% of income by 2016. If employees are not offered affordable health insurance through their employer, they may seek to purchase coverage through the federal healthcare exchange and may be eligible to receive a federal tax subsidy to offset premium and certain out of pocket costs.

Open enrollment for the exchange begins October 1 and continues through March 31, 2014. Open Enrollment for the federal exchange has been delayed for coverage in 2015 and will now run November 15, 2014 – January 15, 2015. Open enrollment for plan years subsequent to 2015 is currently planned to begin October 1 and end January 15.

Therefore, eligible employees not offered health insurance through the State Health Benefit Plan will have ample time beyond the State's open enrollment period to determine eligibility through the healthcare exchange.

Individuals without healthcare coverage when filing income taxes in 2015 for 2014 will be assessed a fee. There are exceptions and exemptions which employees must coordinate on their own with the IRS, along with specific rules governing coverage for dependents. Precisely how the IRS plans to consolidate ACA-related information from the various reporting sources remains unclear at this time.

State agencies are not responsible for assisting employees with healthcare exchange eligibility and enrollment questions and should avoid providing tax advice to employees. Because employees will likely turn to their HR departments with questions, we have included two federally sponsored online resources. Employees may visit the federal insurance exchange website at *HealthCare.gov* to learn more or join a chat room, or call the exchange customer service call center at 1-800-318-2596.

3) What has changed for employers?

Prior to the ACA, employers rather than the Fair Labor Standards Act or Georgia state law defined full-time employment or working hour limits for adult employees. The ACA now defines a full-time employee as someone employed for 30 hours or more per week on average in any month. This definition requires agencies to track each employee's full-time status monthly. Alternatively, agencies may retrospectively average hours worked or paid over a longer period of time to project an employee's future full-time status by using the IRS method of Look-back and Stability periods. This method allows agencies to test for full-time status before extending healthcare benefits to employees who may appear to meet the threshold.

Historically, the State has not determined benefit eligibility based solely on the number of hours worked, but rather on working hours and whether the type of employment relationship was deemed temporary or non-temporary. The State has a number of employment relationships deemed temporary that are not eligible for benefits: temporary; time-limited; seasonal; casual; and interns. With few exceptions, individuals in these positions are hired with an established end-date of 9 months or sooner. Casual employees work on-call and intermittently as needed. Agencies refer to these types of employment relations in the aggregate as "hourly" due to the manner in which wages are calculated. Under current practice, "hourly" employees are not benefit-eligible because they do not meet the two threshold criteria of hours worked and duration of employment. Because they are hired to work a limited period they may also work any number of hours without benefits.

By contrast, non-temporary full-time or part-time employees are hired with no established end date and may be paid on an hourly or salaried basis. Part-time employees may be eligible for benefits depending on the number of hours worked. For example, part-time employees in "agencies" (as the term is statutorily defined) that are subject to the State Personnel Board Rules working at least 20 hours a week are eligible for leave. If they work at least 30 hours a week they are deemed full-time for purposes of major healthcare and flexible benefits eligibility. Retirement eligibility begins at 35 hours a week.

Under the ACA, duration of employment is no longer a factor relevant to medical benefits eligibility. Any employee that meets the averaged 30-hour weekly threshold must be offered health coverage that meets federally-mandated minimum requirements. Therefore, the ACA changes how we are accustomed to defining benefit-eligible employment relationships. While healthcare eligibility for non-temporary full-time and part-time employees working 30 or more hours will not be impacted, some "hourly" employees may now be eligible for healthcare. Agencies will now be required to routinely monitor working hours for these employees, offer healthcare benefits if they reach the new full-time threshold, and report certain information to the IRS. As a result of the ACA, state employers have a number of new employment definitions to consider when making hiring decisions that impact the type of benefits for which employees may be eligible.

4) What happens if I do not offer healthcare coverage to a full-time employee?

Your agency could be subject to costly penalties. There are two types of penalties that may apply depending on whether eligible employees were offered healthcare insurance at all, or offered healthcare insurance that meets the federally-mandated minimum requirements. Together the penalties are referred to a Pay or Play penalties. Employers with 50 or more full-time or full-time equivalent employees that offer no healthcare insurance to eligible employees will be subject to a penalty of $2,000 for each full-time employee on payroll, minus the first 30, if just one employee purchases insurance on the healthcare exchange. For 2015 only, such large employers with 50 or more full time equivalent employees will be subject to a penalty of $2,000 for each full-time employee on payroll, minus the first 80. For all years after 2015, however, the number of employees deducted from the full time equivalent employee count will be lowered to 30. Employers that fail to offer "affordable" health insurance will be subject to the lesser of the above $2,000 per employee penalty, or $3,000 for each employee that purchases from the exchange and qualifies and receives a premium tax credit. There is also a "minimum value" requirement not addressed here. The federal Department of Health and Human Services (DHHS) will determine when penalties are appropriate and the IRS will enforce the penalties. The IRS will begin enforcing penalties effective January 2015

The Department of Community Health advised in a September memo that entities participating in the State Health Benefit Plan may assume that all options offered meet the "affordable" and "minimum value" requirements. Therefore, you need only be concerned with managing working hours of employees that are not meant to be benefit-eligible.

5) What are my specific responsibilities under the ACA as an HR Leader?

Your responsibilities are:

1**) Identify full-time employees** without benefits today that meet the new full-time threshold, determine whether it is feasible to reduce hours to 29 or less, and make adjustments immediately.

2) comply with the Fair Labor Standards Act notice requirements for the ACA by providing written notice of prescribed content to all current employees by October 1, 2013, and to future new hires within 14 days of hire; and,

3) Continue to **monitor working hours** of the workforce to avoid unintentional expansion of employer-subsidized healthcare or noncompliance penalties.

4) **Offer healthcare coverage** to full-time employees.

6) What is the prescribed content of the ACA notice to employees?

Employers subject to the Fair Labor Standards Act are required to provide notice of certain benefits to employees. The ACA created a new FLSA provision governing healthcare benefits notice, including timing and content of such notice.

In May 2013 the federal Department of Labor issued interim guidance in Technical Release 2013-02 explaining the requirements and what will temporarily constitute compliance. You may view the information online at http://www.dol.gov/ebsa/newsroom/tr13-02.html. Currently there are no penalties for failure to provide notice or timely notice. Although you are free to create your own notice form, the model DOL forms attached to the recent DCH memo provide assurance that you have included all required content.

7) Can I provide notice of the healthcare exchange to employees electronically?

Yes, if you are confident that you can do so in compliance with the DOL's electronic disclosure safe harbor regulation. Electronic delivery is sufficient when regular access to a computer is an integral part of an employee's duties. Alternatively, electronic notice may be sufficient if you have an agreement on file with employees in which they have consented to receiving benefit information electronically. Keep in mind that you may meet these requirements for certain groups of employees, but not others. In all cases, ensure you can demonstrate that the employee actually received the information. If in doubt, distribute paper copies. See, http://www.dol.gov/ebsa/newsroom/tr13-02.html for further guidance.

8) What does it mean to use a Look-back/Measurement or Stability period?

The ACA requires employers to offer healthcare coverage to all full-time employees, defined as anyone that works a weekly average of 30 hours *in any month.* Look-back/measurement period and Stability periods refer to a more practical method for identifying full-time employees other than month-to-month calculations. The Look-back measurement period allows you to look backwards at the average weekly hours actually paid to employees to determine if they should be considered full-time and offered healthcare during a future Stability period.

Regulations also authorize an administrative period of no more than 90 days between the Look-back period and Stability period to give you time to provide notice of eligibility changes, to offer health coverage, and for employees to enroll in healthcare either through the State Health Benefit Plan or federal health insurance exchange.

The Look-back/measurement period must be at least 3 months, but no more than 12 months. The longer the measurement period the greater chance that fluctuation in working hours will average out. Whatever period used to measure eligibility becomes the minimum period used during the Stability period. The Stability period can be longer, but not shorter than the Look-back period, but may in no circumstances be less than 6 months. The Stability period must also immediately follow the Administrative period, or the Look-back period, if no administrative period is used.

9) Will Georgia mandate a 29-hour workweek for hourly paid employees like other states, local governments, and private employers have done?

No. Assuming that all salaried employees are already eligible for healthcare coverage, the ACA only impacts healthcare eligibility for a subset of the State's hourly wage earners. Many agencies hold work hours for these employees below the 29-hour threshold as a matter of routine business, and have already taken steps to eliminate the variable nature of hours worked by these employees to keep the average below 30 hours a week. The decision not to mandate a 29-hour workweek means that compliance with the ACA will not be centrally controlled, but the responsibility of each state employer. Specifically, HR leaders will be called upon to manage working hours of non-benefit eligible staff.

10) Will Georgia have a standard Look-back/measurement period?

Yes. The standard Look-back/measurement period will be 12 months. A 12-month look-back period helps to minimize the administrative burden associated with repeated calculation of full-time status; helps to limit enrollment activity; and provides cushion to adjust hours of employees coming close to the weekly average before the measurement period ends. The State's standard Look-back period will be October 16 to October 15 the following year.

Please note that the final regulations authorize large employers to use a look-back/measurement period for variable hour and seasonal employees to test their eligibility for healthcare. Therefore, the State's "hourly" employees that meet the definition of variable hour or seasonal employees (see definitions section) do not become immediately eligible to enroll in healthcare within 3 calendar months as other new employees do, even knowing they will work 30 or more hours per week for the season. This outcome results from using a 12 month look-back/measurement period which will most likely average the season worker's hours as being less than 30 hours per week.

11) Is an Administrative period required?

No. The ACA permits up to a 90-day gap between the Look-back/measurement and the Stability periods to allow time to coordinate written notice of benefits eligibility and enrollment administration. Georgia will take advantage of such a period.
Please note that 90 days does not mean three months.

12) Does using the Look-back and administrative periods below mean that the state's open enrollment period will be extended?

No. The open enrollment period will remain standardized for all employees. As is the current practice, ongoing employees should enroll during the state's open enrollment period.

13) There are multiple time frames to consider. How are they related?

The ACA requires large employers to offer healthcare coverage within *3 calendar months* to employees hired to work at least 30 hours a week. The IRS defined "offered" in Notice 2012-58 and all procedures outlined within this document take this definition into account.

By contrast, the federally-imposed maximum waiting period is *90 days*. A waiting period is the time between hire date and eligibility for healthcare coverage. For some employees you will know the employee's eligibility status at the time of hire. For other employees you will want to test their full-time status during a Look-back measurement period, either because you don't know how many hours they will work or they will work fluctuating hours, before you can determine eligibility.

Although the federally-imposed maximum waiting period is 90 days, the *SHBP waiting period is up to 60 days*. Healthcare coverage "shall become effective on the first of the month following employment for the full preceding calendar month if the employee has not terminated employment on or before that date." DCH Board Rule 111-4-1-.05. Therefore, to treat all employees eligible for healthcare at hire equally, employers must offer healthcare within the timeframe outlined in the above-cited DCH Board Rule, regardless of the more liberal federal waiting period maximum.

The ACA Administrative period may be no longer than *90 days*. The Administrative period comes into play after you have tested for full-time status during the standardized 12-month Look-back measurement period. The State's standard Administrative period was carefully designed to incorporate the above federal and state requirements.

Finally, the first question of this Q&A document referred to a 120-day threshold. The 120-day timeframe comes into consideration only when determining whether your agency is a large employer subject to the ACA.

These timelines will be laid out graphically in a future update to ensure you are well-prepared to manage decisions in time for the 2014 open enrollment period.

14) Should I manage new hires differently?

Yes, if you hire different types of employees. The types of employees recognized under the ACA are full-time employees, part-time employees, and variable hour or seasonal employees. For purposes of the ACA, full-time employees must be offered healthcare within 3 calendar months of their hire date. The ACA does not require employers to cover part-time employees. Employers may test eligibility of variable hour or seasonal employees before offering healthcare.

15) Does the ACA change the definition of a seasonal employee?

Yes. The definition of seasonal employee has been ambiguous under various regulations, including the proposed version of the ACA regulations. The final regulations provide a more concrete definition – a seasonal employee is defined as those that typically work six months or less, and whose work begins at approximately the same time each year, such as winter or summer. In some instances, the employee may still be considered seasonal even if the seasonal employment period is extended in a particular year beyond its customary duration (regardless of whether the customary duration is six months or less than six months). An example of such an instance would be a ski instructor with a period of employment with a customary duration of six months, working a seventh month in a particular year due to an unusually long snow season.

Please reference the "Definitions" Section for additional information on eligibility of seasonal employees under the ACA.

16) Should I manage rehires differently than new hires?

Yes. An individual rehired after a break in service of at least 13 weeks is a new hire. An individual hired after a break in service of less than 13 weeks is a rehire. For the education institutions, an individual rehired after a break in service of at least 26 weeks is a new hire. For educational institutions, an individual rehired after a break in service of at least 26 weeks is a new hire.

The significance of determining whether a hired individual is a new hire or a rehire is that the answer impacts how you will evaluate the individual's full-time status and healthcare eligibility, and therefore ultimately determine when you must offer healthcare coverage. A returning employee with a break in service of less than 13 weeks will be considered as continuing his or her employment, must be credited for hours worked during the most recent measurement / look-back period, and offered immediate healthcare enrollment if the employee's average hours worked or paid meet the full- time threshold.

Exception: Employees with a break in service of less than 13 weeks may still qualify as a new hire if the individual's break in service was more than 4 weeks, and the break in service was longer in duration than the last employment period.

17) How do I manage employees hired in the middle of the standard Look-back/measurement period?

Below is a written explanation. For a pictorial explanation see Attachment 1: ACA Decision making Flowchart. When hiring, agencies must now ask a number of questions at the time of hire: 1) is the individual a new hire or rehire? 2) Will the individual work 30 hours a week? 3) If the individual is a new hire that you anticipate will work 30 hours a week or more, is the individual a variable hour or seasonal employee?

If the person hired will work less than 30 hours a week there is no requirement to offer healthcare coverage during the Stability period.

If the person is a new hire that will work 30 hours or more a week you must offer healthcare coverage after the State's waiting period.
If the person hired is a rehired full-time employee, you must deem the employee full-time and offer healthcare coverage immediately. Once the employee is employed for a full look-back/measurement period you can test again to determine whether the employee has remained eligible.

If the person hired is a new hire and a variable hour or seasonal employee, you will not offer healthcare coverage immediately. You will use a 12-month measurement that begins on their date of hire. This is an *Initial measurement period.* An Initial Measurement period differs from the State's standard measurement period described in Section 2 below in that an Initial period begins on the date of hire. For variable hour and seasonal employees you will test two times for eligibility within the first year of employment. You will test for healthcare eligibility at the end of the Initial Measurement period, and again at the end of the State's standard measurement period.

Alternatively, rather than ask yourself these questions at the time of hire, you may implement a conservative approach within your agency and mandate that all new staff hired to work less than a year work no more than 29 hours weekly.

Caution: If the same seasonal or temporary employee returns to employment repeatedly, be sure to conduct the new hire and rehire analysis. The individual may be a new hire upon the first hire date, but become a rehire thereafter.

Caution: Considering the lack of ACA or regulatory guidance regarding multiple government entities in the context of calculating Play or Pay penalties, hiring individuals that worked at other state entities may also require agencies to consider individuals as rehires rather than new hires. Take care to enforce Board Rule 7 regarding secondary employment, and to ask applicants about work at other state entities upon hire, so that you can make an informed hiring decision.

(See Appendix – Examples 5 through 7 for rehire scenarios)

18) How should I manage rehired retirees?

With the same attention that you will now manage other "hourly" employees. The ACA and related regulations do not contemplate state-specific laws such as Georgia's law governing rehired retirees. You must conduct the same analysis with rehired retirees as you would with other hires to determine whether they are new hires or rehires.

Also, do not assume that all rehired retirees have elected to continue healthcare coverage in retirement. We recommend that you offer coverage and document refusal the same with rehired retirees as you will with other employees.

It will also become increasingly important to avoid misclassifying rehired retirees as contractors, unless you are confident the designation will withstand IRS scrutiny. Contractors are not employees subject to the ACA.

One quick way to test whether a re-employed retiree is an employee or a bona fide contractor is to determine whether the retiree is registered to conduct business in the State and has other clients. If the answer is yes, the retiree has likely become a bona fide contractor depending on all the circumstances. Contractors are not placed on state positions within PeopleSoft, but governed by a written contractual agreement. Therefore, they would not be identified through the payroll process.

19) What should I be doing right now to ensure my agency is in compliance with the ACA?

Step 1: If you have not already begun to do so, evaluate the different types of employment relationships that you employ and evaluate whether it is desirable to implement the conservative approaches outlined in this document with regard to individuals hired to work less than one year or from temporary staffing agencies.

Step 2: Communicate any new policy or procedures pertaining to hiring to all hiring managers. It would also be prudent to ensure future hires are coordinated through HR so that you can conduct the proper hiring analyses in a timely manner.

Step 3: Between now and open enrollment period in 2014, ensure that you have checked full-time status of all employees hired on or before October 16, 2013, that meet the full-time threshold as determined at the end of the standard look-back period. At that time you may offer healthcare coverage as appropriate and in time for open enrollment in 2014 for coverage during the 2015 benefit year.

Step 4: Use the available PeopleSoft Queries to monitor working hours at periodic intervals during the standard look-back period and make adjustments to working hours as necessary.

Step 5: Continue to communicate ACA questions and concerns to the DOAS HRA Division.

Step 6: Communicate significant fiscal impact concerns to your budget officers immediately.

If you have employees that purchase from the healthcare exchange during the October 2013 open enrollment period, you will not experience penalties unless they remain in full-time status during the standard Look-back period, October 16, 2013 – October 15, 2014 and they are not offered affordable healthcare coverage during the Administrative period for the 2015 benefit year.

20) Is the Stability period always the calendar year/plan year time frame of January – December?

Yes.

21) How do we pay SHBP cost for hourly positions?

Employer-paid contributions are based on an agency's prorated portion of the state's payroll. Therefore, full-time contributions are based on an agency's benefit-eligible budgeted positions.

22) If the combined hours of an employee working for two state agencies meet the full-time threshold, is the employee eligible for healthcare coverage?

No, unless the employee works 30 hours a week on average at one of the agencies. State agencies are individual employers for purposes of the ACA. (**Review Section 1, Question 1)**

23) If an employee works part-time at a state agency and a technical school, is the employee eligible for healthcare? If so, which entity should pay for coverage? If neither entity offers coverage which entity will pay the penalty?

While technical schools are "agencies" within the meaning of the State Personnel Board Rules, state agencies are individual employers for purposes of the ACA. **(Review Section 1, Question 1)** Therefore, both the technical school and the state agency is required to individually track the working hours of the employee during the Look-back measurement period and offer healthcare when appropriate. However, we interpret this question as getting at the broader issue of which agency will pay the employer contribution for a dual employed employee. If both employers are large employers and the employee meets the full-time status for each employer, each employer must *offer* healthcare coverage to comply with the ACA. A future update to this document will answer the technical question about which agency pays.

SECTION 2: Eligibility

1) Should I offer healthcare enrollment to all employees to be safe?

No. The State has considered a number of options to determine how best to respond to the ACA. The options included whether to do nothing (pay rather than play), to extend healthcare to all employees, or to prevent additional costs. Because healthcare is employer-subsidized and we must be good stewards of taxpayer dollars, the State has chosen to take steps to prevent additional costs to taxpayers.

2) How can I identify all of my full-time employees?

You can determine working hours for each employee on a monthly basis. Alternatively, you can use the IRS look-back/measurement period to test whether employees are full-time before offering coverage during a future Stability period.

3) What is the overall process for using the Look-back and Stability periods?

Example: Using a 12-month Look-back period, an administrative period of less than 90 days that incorporates the current Open Enrollment period of Oct 21- Nov 8, and a stability period of 12 months:

Step 1: Calculate average weekly hours for the Look-back period chosen:

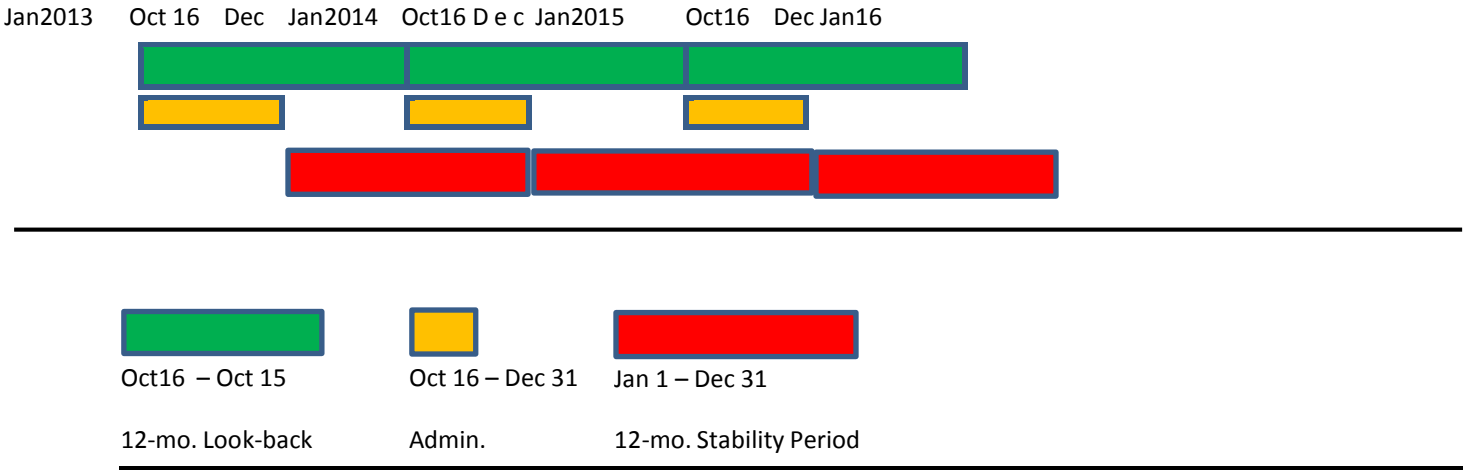
Total working hours
Wks. in look-back period = Average weekly hours

Agencies with small workforces and minimal number of hourly employees can calculate full-time status manually as noted above.

For the convenience of agencies with larger workforces and a significant number of hourly employees, HRA has partnered with the State Accounting Office to provide a semi-automated manner for agencies using Teamworks (PeopleSoft) payroll to identify full-time employees using public queries. Please refer to this link for additional detailed guidance: Queries for ACA Look-back. These queries are for entities that use Teamworks' (PeopleSoft) payroll only and will work for agencies on monthly or semi-monthly payroll cycles.

You will also have the ability to spot check working hours of employees throughout the Look-back/measurement period using 3, 6, and 9 month queries, which will allow you to make adjustments as necessary throughout the look-back/measurement period. Once the standard look-back/measurement period ends, any employee that worked 30 hours weekly on average must be offered healthcare coverage for the duration of the subsequent Stability period.

Step 2: Provide notice of healthcare eligibility and enrollment to newly identified full-time employees during the Administrative period.
Step 3: Repeat. The periods will necessarily overlap to avoid gaps in coverage as depicted below:



In the above graph, the standard look-back period is October 16 in year 1 to October 15 in year 2. The Administrative period encompasses the current Open Enrollment period to allow employees employed for the entire look-back period meeting the full-time threshold to enroll in healthcare. The Administrative period is less than 90 days and immediately follows a 12-month Look-back period. The Stability period runs concurrently with the normal benefit plan year of January through December.

4) What is included in total working hours?

Total working hours used in calculating average hours worked by an employee includes time actually worked, any paid time off, and any unpaid protected leave, such as Family Medical Leave, Military Leave, jury duty, among others. There are two calculation methods from which to choose to account for a ***returning*** employee's period of absence during the look-back/measurement period due to special unpaid leave.

(1) The employer would determine the employee's average hours of service for a measurement period by computing the average after excluding any special unpaid leave during that measurement period and using that average as the average for the entire measurement period; or

(2) Alternately, the employer could treat the employee as credited with hours of service for any periods of special unpaid leave during that measurement period at a rate equal to the average weekly rate at which the employee worked during that same measurement period.

There is no clean system solution to automate this calculation because the period of leave will be so varied. We recommend that you ensure you know which employees are out on protected leave and do a manual calculation for those employees. Please reference the scenario examples attached to this document.

(See Appendix – Examples 8 and 9)

5) Can non-state entities or entities that do not use PeopleSoft payroll use the public queries?

No. The public queries were tailored for state agencies using PeopleSoft payroll only. However, non-state entities and entities using other payroll systems may benefit from the manual formula noted above when devising their own tracking tool.

6) Does using the Measurement / Look-back and Administrative periods below mean that the state's open enrollment period will be extended?

No. Georgia's Open Enrollment period will remain standardized for all employees. Just like today, all current employees should enroll during the state's open enrollment period. New hires and rehires may enroll upon hire or upon eligibility, whichever the case. This process is subject to change once we gain additional experience with using this methodology.

7) If an hourly person is hired or determined to be eligible for coverage in the middle of the standard Look- back period, would they sign up for coverage at that time?

No. You must determine at the time of hire for all employees, *regardless of how their pay accrues (hourly or salaried) or the timing of that payment (weekly, semi-monthly, monthly)* whether they are a new hire or rehire, and whether they will work 30 or more hours. Reread Section 1 above to verify your understanding of how the ACA changes how State employers must define benefit-eligible employees.

A variable hour or seasonal employee that begins employment outside of the standard measurement period will have his/her initial measurement period begin at the point of employment and continue for 12 months. At that point, a determination must be made as to the person's eligibility for health insurance. The ACA allows for a 13 month window from the date of hire. In contrast to the standard measurement period used for ongoing employees, when an initial measurement period of 12 months is used for new employees the Administrative period is reduced to one month. (12mos. measurement + 1 admin = 13 months). **(See Appendix – Examples 1 through 4)**

8) What is the waiting period for any part-time employee once they have been deemed eligible for health benefit?

Reference the definition of part-time employee contained in Definitions section. An individual hired to work 30 hours per week is considered a full time employee eligible for healthcare. Such an employee should be offered healthcare upon hire. Part time employees are not eligible for healthcare. If a part-time employee is later found to be working 30 hours or more on average for a full measurement period the employee becomes a full time employee for purposes of healthcare coverage during the subsequent stability period. The employer would offer the now full time employee healthcare coverage during the next regular open enrollment period.

All employees, including employees not eligible for healthcare, are tested for full-time status after the standard measurement/look-back measurement period. The benefit of using the measurement/look-back period is that it locks down an employee's eligibility or non-eligibility for the duration of the subsequent Stability period and therefore assures employers they will not be subject to penalties regardless of the hours employees may be working during the Stability period. Said another way, eligibility is not determined in real time. It is determined by the past measurement period. Therefore, an employee who did not meet the full-time threshold during a previous measurement period whose hours increase to full-time during a current Stability period is not offered healthcare until the next open enrollment period because the State's standard stability period begins January 1.

If an employee on a part time position is transferred to a full time position during a measurement period, the employee will then become eligible for health insurance coverage within the 90 day period following the transition. However, because the State's waiting period is less than 90 days, in practice the employee in this situation would be offered healthcare immediately.

9) What if we are hiring a person part time to work 30 hours per week, when would they become eligible?

The employee would be eligible for healthcare at the time of hire and must be offered within 3 months of hire, unless the employee is a seasonal or variable hour employee. See Q&A in Section 1 above.

10) If an hourly person is hired or determined to be eligible for coverage in the middle of the standard Look- back period, would they sign up for coverage at that time?

No. You must determine at the time of hire for all employees, *regardless of how their pay accrues (hourly or salaried) or the timing of that payment (weekly, semi-monthly, monthly)* whether they are a new hire or rehire, and whether they will work 30 or more hours. Reread Section 1 above to verify your understanding of how the ACA changes how State employers must define benefit-eligible employees.

A variable hour or seasonal employee that begins employment outside of the standard measurement period will have his/her initial measurement period begin at the point of employment and continue for 12 months. At that point, a determination must be made as to the person's eligibility for health insurance. The ACA allows for a 13 month window from the date of hire. In contrast to the standard measurement period used for ongoing employees, when an initial measurement period of 12 months is used for new employees the Administrative period is reduced to one month. (12mos. measurement + 1 admin = 13 months). **(See Appendix – Examples 1 through 4)**

11) What if we hire an employee to work six months and they work 30 hours a week? When do they become eligible for healthcare?

Employers must determine at the time of hire whether the individual is a part-time or full-time employee eligible for health-care, a variable employee, or a seasonal employee. If the employee is a part-time, variable, or seasonal employee, you are not required to offer healthcare until you test them for eligibility at the end of a full look-back measurement period. If at the time of employment it is determined that the employee will work 30 or more hours per week and will be employed for a period exceeding 90 days, health coverage must be offered immediately.
See Q&A Section 1 above and Attachment 1.

12) An hourly employee works full-time to cover for an employee who is out on long-term leave and who is expected to be granted disability retirement. If the hourly employee is hired permanently, when will the employee become eligible for healthcare?

You must determine at the time of hire for all employees, *regardless of how their pay accrues (hourly or salaried) or the timing of that payment (weekly, semi-monthly, monthly)* whether they are a new hire or rehire, and whether they will work 30 or more hours. If they will work 30 hours or more, you must determine whether they meet the definition of a variable hour employee. In this case, given the term "hourly employee" in the question we assume the individual was hired as an employee, and not from a temporary staffing agency. Because you knew at the time of hire that the individual would work full-time, you are required to offer healthcare coverage. Although you may have initially anticipated the employee to work only a short period of time, that short period of time was not defined with an end date nor was it a defined season. **See Q&A Section 1 above and Attachment 1.**

13) My agency hires employees on an hourly position for a 3-month probationary period. At the end of the probationary period, some are moved to a full-time position, some are terminated, and some may be extended before a final hiring decision is made. How does the ACA impact this program?

We assume from your question that you hire year-round and not seasonally. We likewise assume these employees would not meet the variable employee definition of the ACA. They will work at least 30 hours weekly during the probationary period and working hours will not be reduced at some point within the year. Therefore, unless you are able to hold weekly hours below 30 or reduce the duration of the probationary period, these employees will be eligible for healthcare. If it is not your intent to increase these costs, the program must be dismantled. **See Q&A in Section 1 and Attachment 1.**

14) When must agencies offer healthcare to "hourly" employees to comply with the ACA?

Agencies must test all employees for full-time status during the State's standard Look-back period (Oct 16, 2013 – Oct 15, 2014) and be prepared to offer healthcare coverage during the standard Administrative period such that all healthcare-eligible employees may enroll during the 2014 Open Enrollment period and receive coverage under the SHBP effective January 1, 2015. Penalties will be incurred beginning January of 2015 if 75 % of your healthcare eligible, full time employees are not offered health coverage. For all years after 2015, 95% of your healthcare eligible, full time employees must be offered health coverage to avoid penalties. We are recommending that all State agencies become fully compliant by 2015.

SECTION 3: STAFFING AGENCIES / CONTRACTORS (1099) / INTERNS

Answers to questions addressed in this Section rely on guidance provided in IRS Notice 2012-58, which large employers are entitled to rely on during 2014 without invoking ACA penalties. Therefore, answers are based on what is known at this time and draw upon other resources such as the Fair Labor Standards Act provisions, DOL Fact Sheets, and case law as necessary. The IRS has expressed intention to address the need for further guidance regarding short-term employees (defined in this document as non-seasonal employees on state positions hired to work less than a year); employees borrowed from temporary staffing agencies; and interns. Therefore, you may be confident in the answers provided here for now, and equally confident that you will not be subject to penalties for the duration of the decision that result from this reliance, but future answers to these same questions may change.

1) Can I hire independent contractors to avoid ACA requirements?

Yes. The ACA applies to employees, not contractors. Nevertheless, it will become increasingly important that you are precise when designating individuals as contractors (1099 employees) rather than employees. The consequences for misclassification include the inconvenience of a federal DOL audit, costly settlement or litigation, and now the added cost of ACA penalties with retroactive employer-paid subsidies likely. Whether an individual is an employee or independent contractor is a fact-intensive, multi-factor test. It would be prudent to work with your normal legal advisor if you have questions about whether individuals working in your workforce are bona fide contractors.

2) Can I hire from a staffing agency to meet my variable hour or temporary employment needs and avoid ACA penalties?

The DOAS HRA Division cannot recommend the practice of hiring from staffing agencies to routinely supplement full-time staffing requirements. The IRS has signaled intent to issue further guidance.

The open issue for State employers is whether an individual that is not offered affordable healthcare will be deemed an employee of the staffing agency or an employee of the employing agency (here, a state entity). Traditionally, the State has considered employees from staffing agencies as employees of the temporary agency and offered no employment benefits. Yet a number of recent DOL investigations involving employer use of temporary staffing employees have deemed the employer and staffing agency joint employers, resulting in costly back pay settlements.

Legal counsel from a sister agency has also brought the "Borrowed Servant Doctrine" from case law to our attention, which supports that the State must consider temporary hires from staffing agencies employees for purposes of offering healthcare. Under the Borrowed Servant Doctrine, three factors are used to determine whether a borrowed worker (temporary employee hired through a staffing agency) is the employee of the staffing agency or the employee of the borrowing entity (in this case a state agency employer). The three factors are: (1) the borrowing employer must have complete control and direction over the employee for the occasion; (2) the lending employer (staffing agency) must have no such control; and (3) the borrowing employer must have the exclusive right to discharge the employee. *U.S. Fidelity, etc. v. Forrester*, 230 Ga. 182, 183, 196 S.E. 2d 133 (1973). If the factors are met and the worker is found to be the employee of the borrowing entity for the duration of the employment, the borrowing entity assumes all legal liabilities that are assumed for permanent employees. Therefore, state agency employers that hire temporary employees through staffing agencies under circumstances that meet these three factors would be required to offer health care coverage if the employee meets the full-time threshold under the ACA and is otherwise eligible under the SHBP. Recently proposed guidance by the IRS, which applies the well-established factors used to determine whether employees have been properly classified as contractors to temporary employees hired from staffing agencies, provides further support that the ACA changes how agencies should proceed with this type of employment arrangement.
The IRS defines an individual as a common law employee by examining evidence that falls into three categories: Behavioral Control; Financial Control; and the Relationship of the Parties. Behavioral Control considerations include whether an entity has authority over where the worker does the work, what tools or equipment the worker uses, what order or sequence to be followed, the degree of instruction, the extent the entity retains the right to control compliance with instructions, and the effect to the worker for noncompliance with instructions. Financial control considerations include whether the worker makes a significant financial investment in the performance of the work, the extent the worker makes services available on the open market, and the worker's opportunity for profit or loss. The Relationship of the Parties consideration looks to how the worker and the entity perceive the relationship, the existence of an ongoing relationship, and whether the entity engages the employee with an expectation of an indefinite relationship. A long term but definite relationship is a neutral factor in this analysis. No one category of evidence weighs more heavily than other considerations, rather all of the circumstances surrounding the facts are considered.

For the time being, the DOAS HRA Division recommends that you work closely with your normal legal advisor to determine the best policy for your agency with regard to hiring temporary workers through staffing agencies. The fact-specific inquiry detailed above must be applied to each set of circumstances. Each agency can neither assume these employees eligible for healthcare nor fail to offer healthcare without significant financial impact to the State. We further recommend that you review all current temporary workers supplied by staffing agencies and adjust working hours as necessary before January of 2015. Finally, human resources professionals should coordinate with hiring managers for future hires supplied by staffing agencies.

3) How do we handle temporary employees?

For purposes of this question, a temporary employee is defined as a new hire hired to work more than 90 days, but less than 12 months, on a non-seasonal basis. The ACA calls this relationship a "short-term" employee. A short-term employee that will work less than 30 hours a week is not eligible for healthcare. If the employee will work 30 or more hours a week, you must offer healthcare coverage within 3 calendar months of the hire date.

4) Are students that rotate between school and their educational institution (co-ops) or interns in general eligible for healthcare coverage?

The ACA does not apply to unpaid interns/externs because the definition of "hours of service" under Section 4890H applies only to hours for which an employee is paid or entitled to payment. For a number of reasons, we anticipate that agencies will not need to offer healthcare coverage to paid interns/externs hired for the first time. Because interns/externs traditionally work on a semester basis, they will not be subject to ACA because they will work for less than 90 days initially. Where they work for a longer period of time, or on a recurring basis, we anticipate they will meet the part-time or variable hour definitions of the ACA, and as such will not become eligible for healthcare either because they will not work 30 hour weeks or they will not work for a full measurement / look-Back measurement period.

As for paid interns/externs, the final regulations for ACA provide an exception for hours of service performed by students which are subsidized by a federal work study program or a substantially similar program of a state or political subdivision. Hours of service for which the student employee is paid other than through the federal work study program or similar state or government equivalent are required to be counted in determining whether an employee meets full time eligibility. Due to the potential for misuse, the final regulations do not provide an exception for paid internships or externships; therefore, employees in those arrangements should be treated in the same manner as other employees. Meaning, agencies should evaluate interns/externs using the same analysis applied with other hires as outlined within this document.

Therefore, for the above reasons the DOAS HRA Division must recommend a conservative approach when hiring interns/externs. Hire interns/externs to work no longer than three months or keep working hours below 30 hours, and avoid rehiring within the same calendar year. If you are an agency on the cusp of becoming a large employer, manage the total number of interns/externs hired to stay below the 50-employee threshold.

SECTION 4: TECHNICAL--PEOPLESOFT DATA INPUT

1) Once we have identified full-time employees eligible for healthcare coverage, how should we create the record in PS to show that they are eligible for flexible benefits or healthcare?

The ACA pertains to healthcare eligibility only. The federal law does not mandate eligibility for any other employment benefit, including flexible benefits or paid leave. The State will not be extending flexible benefits participation to these employees at this time. This decision is based on the temporary nature of these employment relationships and the fact that the State's payroll, including pay deductions, is administered on a lag, among other considerations.

Related to which pay deduction codes to use, there is currently no alternative to the use of a "0 record" in PeopleSoft to designate a benefit-eligible employee. The HRA Division of DOAS has assembled a working group comprised of DOAS, DCH, SAO, and ERS to work with the SAO in finding a technical solution with minimum impact to dependency agency operations. The target implementation date for this solution is sometime prior to the 2014 open enrollment period. The HR Community will be updated with new information as it becomes available.

2) Can we rely on the PS public queries to identify our healthcare eligible employees?

Yes.

3) Does "Hrly Emp Type" with "RGH" listed for all employees in the PS public query refer to "Regular Hours"?

Yes.

4) Does "Hourly Hours" mean the total number of hours worked?

Yes. The HRA Division will work with the SAO to provide a more descriptive label for this column.

5) Does "Sum OT Hrs." mean a summary of overtime hours worked?

Yes. "Sum OT Hrs." adds together all overtime hours worked.

6) Should I add "Sum OT Hrs." to "Hourly Hours" to determine total hours worked?

No. "Sum OT Hrs." and "Hourly Hours" are added together in column R labeled "Total Hours".

7) Does "12 Month Avg per Week" reflect the average hours worked per week for the query period?

Yes.

SECTION 5: REPORTING AND PENALTIES

The final Regulation on ACA Reporting became effective on March 10, 2014. A working group comprised of The Governor's Office of Planning and Budget (OPB), The Department of Administrative Services (DOAS), The State Accounting Office (SAO), and The Department of Community Health (DCH) representatives continue to review the final ACA reporting requirement responsibilities and will address these sections within the calendar year. The ACA reporting requirements are not effective until January 2016, related to the 2015 benefit year.

1) How will the IRS know an individual's employer offered affordable healthcare?

Large employers and employees are among those required to report information to the IRS. The federal Health and Human Services agency, which will determine an individual's eligibility to purchase healthcare from the federal exchange, will also share information with the IRS.

2) What happens if I do not offer healthcare coverage to a full-time employee?

Your agency could be subject to costly penalties. There are two types of penalties that may apply depending on whether eligible employees were offered healthcare insurance at all, or offered healthcare insurance that meets the federally -- mandated minimum requirements. Together the penalties are referred to a Pay or Play penalties. For 2015 only, such large employers with 50 or more full time equivalent employees will be subject to a penalty of $2,000 for each full-time employee on payroll, minus the first 80. For all years after 2015, however, the number of employees deducted from the full time equivalent employee count will be lowered to 30, if just one employee is determined eligible for a federal premium subsidy and utilizes the subsidy to purchase insurance on the healthcare exchange.

Employers that fail to offer "affordable" health insurance will be subject to the lesser of the above $2,000 per employee penalty, or *$3,000* for each employee that purchases from the exchange. There is also a "minimum value" requirement not addressed here. The federal Department of Health and Human Services (DHHS) will determine when penalties are appropriate and the IRS will enforce the penalties. The IRS will begin enforcing penalties effective January 2015.

The Department of Community Health advised in a September memo that entities participating in the State Health Benefit Plan may assume that all options offered meet the "affordable" and "minimum value" requirements. Therefore, you need only be concerned with managing working hours of employees that are not meant to be benefit-eligible.

3) Should I just offer healthcare enrollment to all employees to avoid penalties?

No. The State has considered a number of options to determine how best to respond to the ACA. The options included whether to do nothing (pay rather than play), to extend healthcare to all employees, or to prevent additional costs.

Because healthcare is employer-subsidized and we must be good stewards of taxpayer dollars, the State has chosen to take steps to prevent additional costs to taxpayers.

4) What will the exact penalty be if my agency doesn't offer health insurance coverage to eligible employees?

For an illustration of potential penalties, refer to the example provided by Cigna in the following link:

Http: //www.cigna.com/health-care-reform/employer-mandate

5) Are there penalties for non-compliance with the ACA reporting requirements?

Yes. Separate penalties can be incurred for non-compliance with each of the following four reporting requirements.

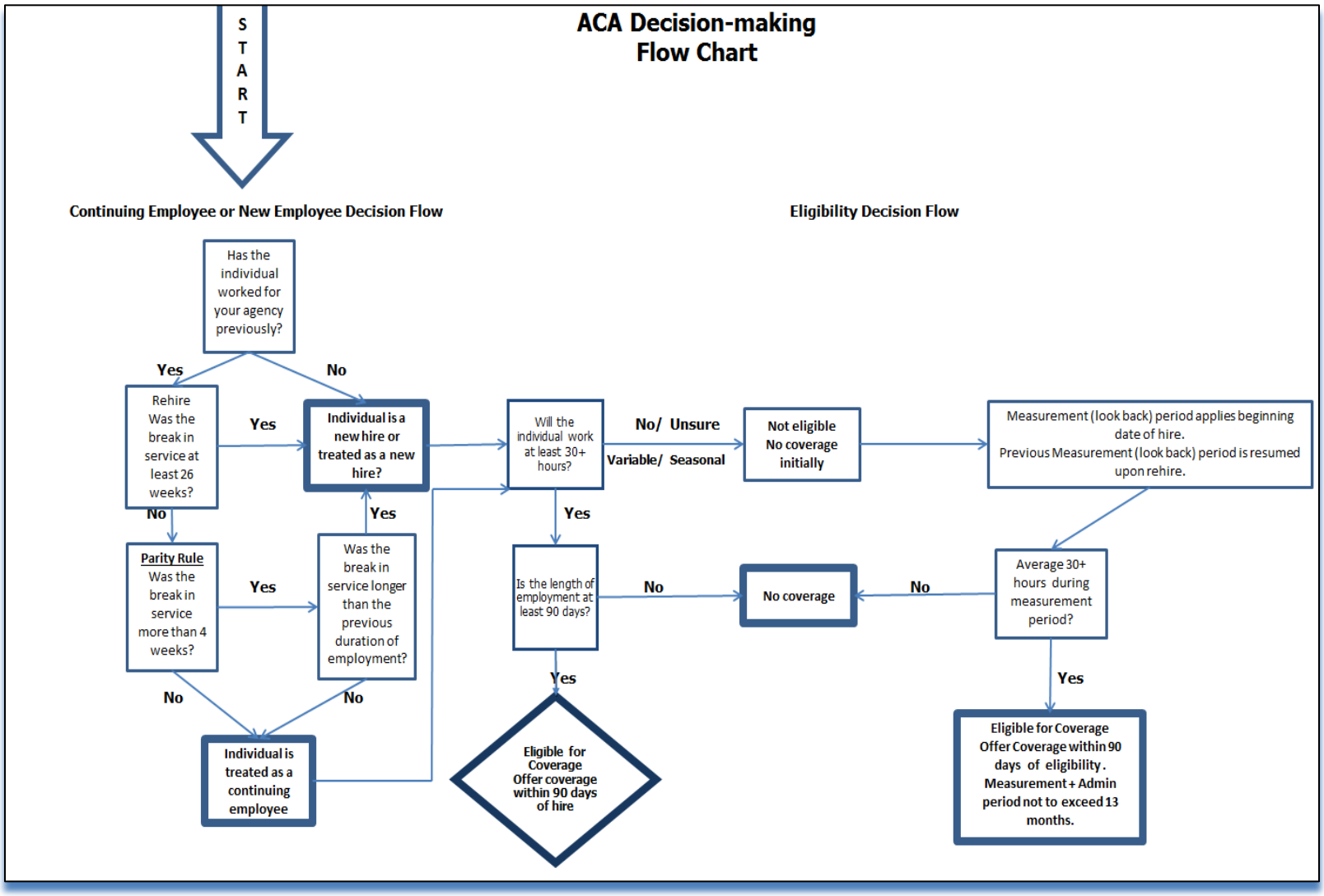
Minimum Essential Coverage Information Reporting

a) Employer Sponsored Plan Information Return
b) Primary Insured Statement

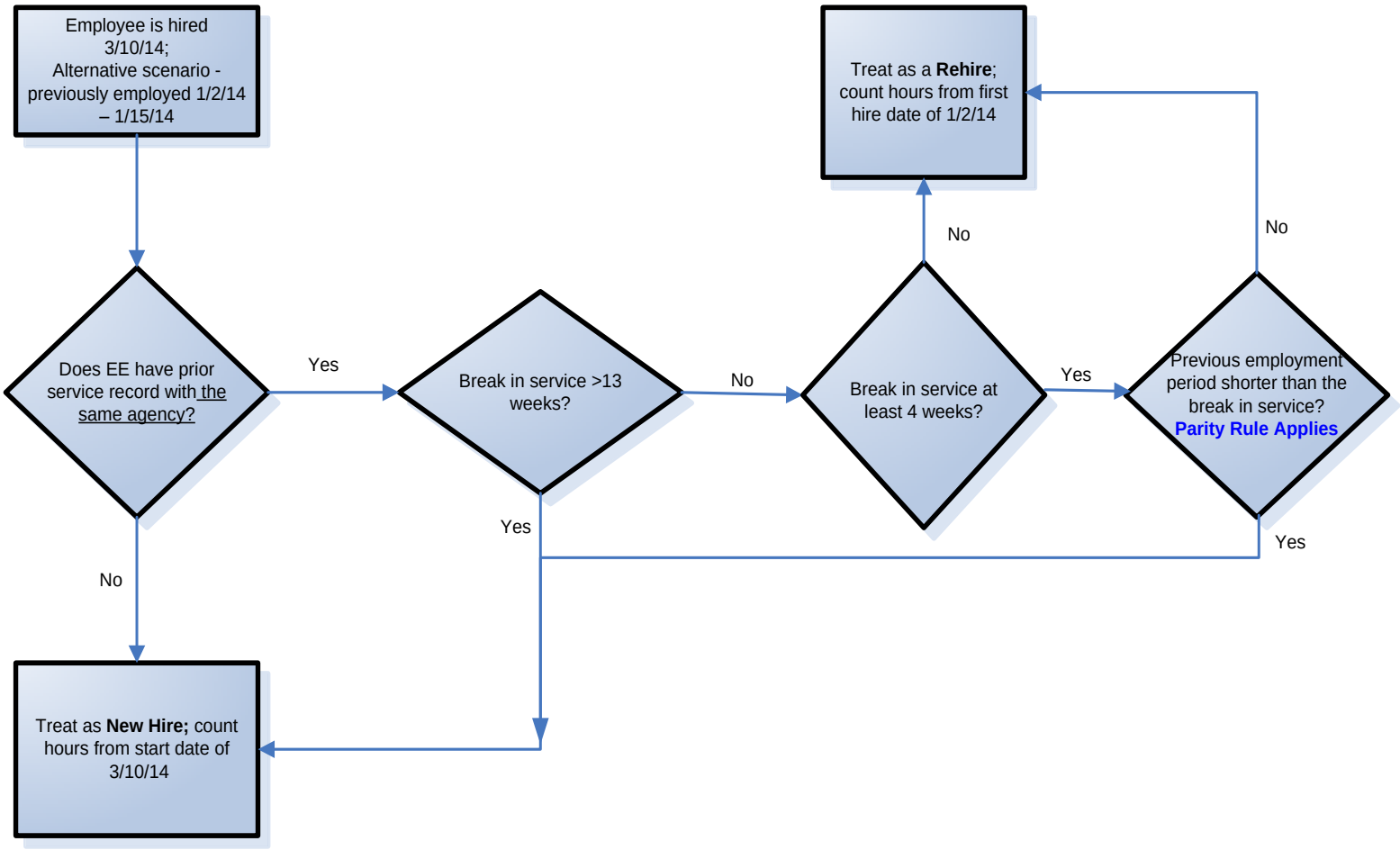
Applicable Large Employer Information Reporting

a) Applicable Large Employer Information Return
b) Employee Statement

Appendix


ACA Decision-making Flow Chart
START
Continuing Employee or New Employee Decision Flow
Eligibility Decision Flow
Has the individual worked for your agency previously?
Yes
No
Rehire Was the break in service at least 26 weeks?
Yes
Individual is a new hire or treated as a new hire?
No
Parity Rule Was the break in service more than 4 weeks?
Yes
Was the break in service longer than the previous duration of employment?
Yes
No
No
Individual is treated as a continuing employee
Will the individual work at least 30+ hours?
No/ Unsure
Variable/ Seasonal
Not eligible No coverage initially
Measurement (look back) period applies beginning date of hire. Previous Measurement (look back) period is resumed upon rehire.
Yes
Is the length of employment at least 90 days?
No
No coverage
Yes
Eligible for Coverage Offer coverage within 90 days of hire
Average 30+ hours during measurement period?
No
Yes
Eligible for Coverage Offer Coverage within 90 days of eligibility. Measurement + Admin period not to exceed 13 months.

Rehire Decision Tree
DOAS HRA 4.3.14



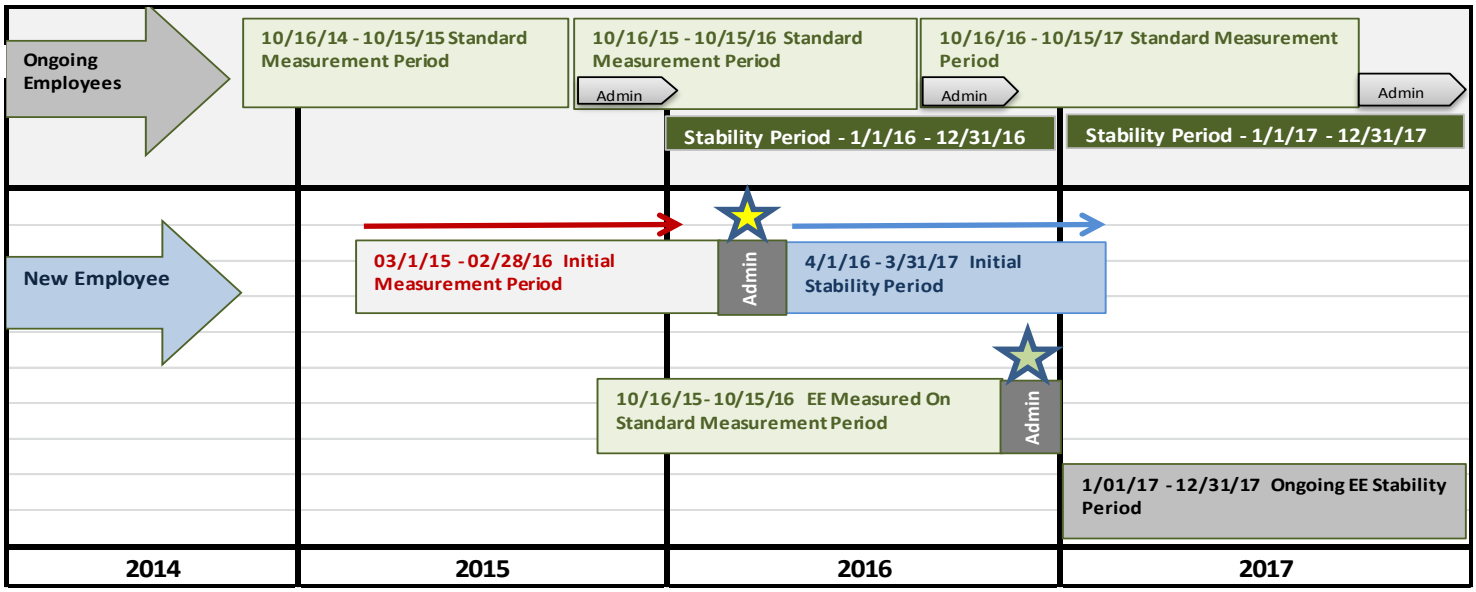
Please Note: Educational institutions will maintain a 26 week break in service threshold to determine status upon rehire. Additionally, the Technical College System of Georgia is considered one employer for purpose of ACA.

Example 1:

Employee A is a new variable hour employee who starts work on March 1, 2015. Her initial measurement period runs from March 1, 2015, through February 28, 2016. During the administrative period immediately following the initial measurement period, it's determined she works an average of 31 hours per week. She is eligible for coverage effective April 1, 2016 for a full 12 month period ending March 31, 2017. This is termed the initial stability period. Employee A is then measured again during the administrative period in 2016 along with all Ongoing Employees (those who have worked a full standard measurement period). During this period, she averages 34 hours and again meets the FT threshold. She is eligible for continued coverage during the ongoing employee stability period effective 01-01-2017. The employee's initial stability period and ongoing employee stability period will overlap during the first three months of 2017.

Test #1 – First Administrative Period: 3/1/16 – 3/31/16

Test #2 – Ongoing Employee Administrative Period: 10/16/16 – 12/31/16



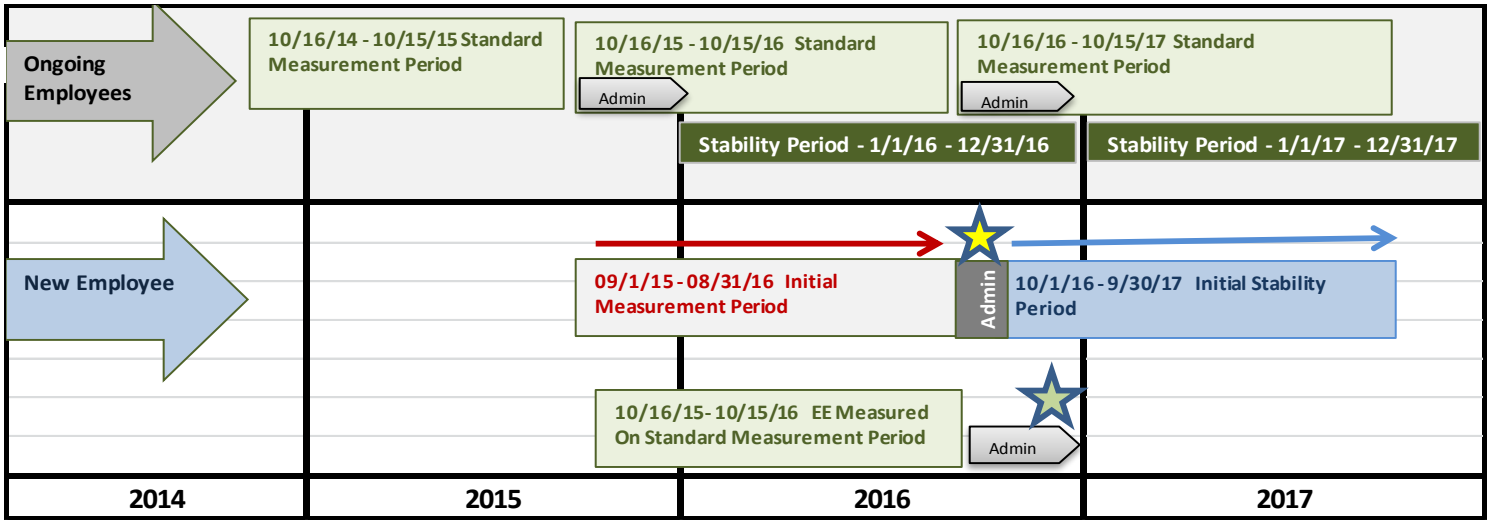
Example 2:

Employee B is a new variable hour employee who starts work on September 1, 2015. Her initial measurement period runs from September 1, 2015, through August 31, 2016. During the administrative period immediately following the initial measurement period, it's determined she works an average of 34 hours per week. She is eligible for coverage effective October 1, 2016 for a full 12 month period ending September 30, 2017.

This is termed the initial stability period. Employee B is then measured again during the administrative period in 2016 along with all Ongoing Employees (those who have worked a full standard measurement period). During this period, she averages 27 hours and does not meet the threshold. Therefore, she will not be offered health coverage for the ongoing employee stability period from 01/01/17 - 12/31/2017. Her last day of health coverage would be September 30, 2017.

Test #1 – First Administrative Period: 09/1/16 – 09/30/16

Test #2 – Ongoing Employee Administrative Period: 10/16/16 – 12/31/16

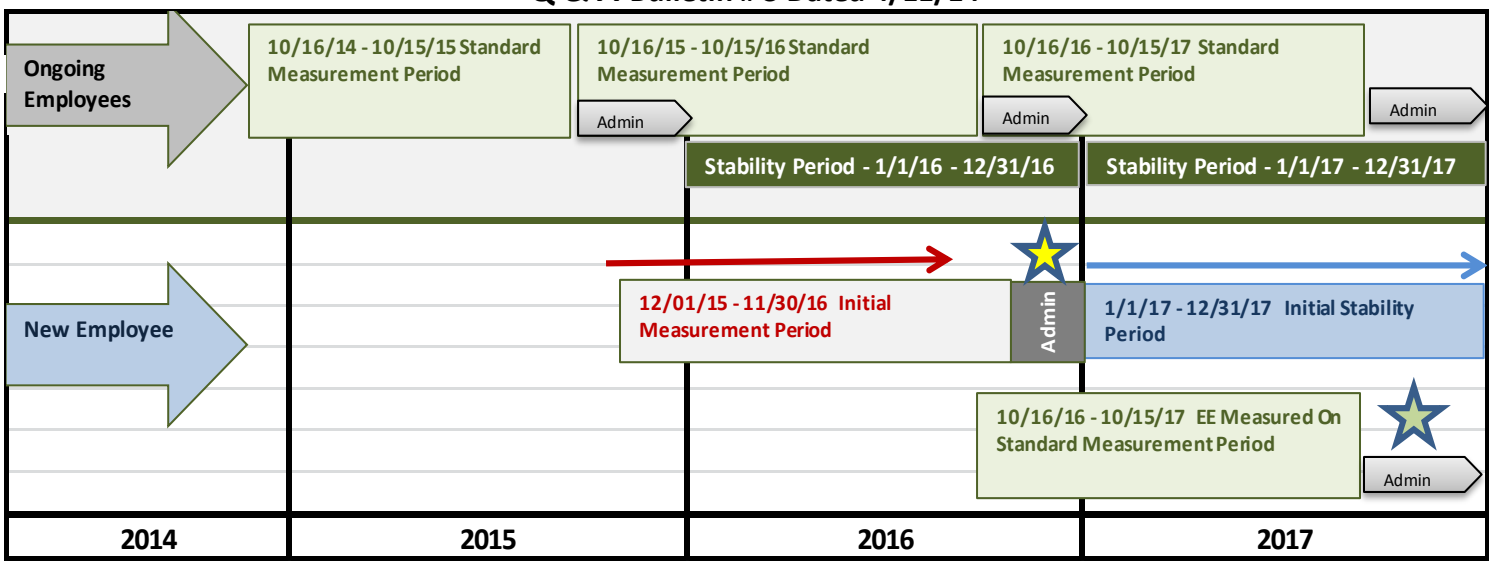


Example 3:

Employee C is a new variable hour employee who starts work on December 1, 2015. His initial measurement period runs from December 1, 2015, through November 30, 2016. During the administrative period immediately following the initial measurement period, it's determined he works an average of 36 hours per week. He is eligible for coverage effective January 1, 2017 for a full 12 month period ending December 31, 2017. This is termed the initial stability period. Employee C is then measured again during the administrative period in 2017 along with all Ongoing Employees (those who have worked a full standard measurement period). If he meets the fulltime threshold again during the standard measurement period, he will be eligible for coverage effective January 1, 2018.

Test #1 – First Administrative Period: 12/1/16 – 12/31/16

Test #2 – Ongoing Employee Administrative Period: 10/16/17 – 12/31/17

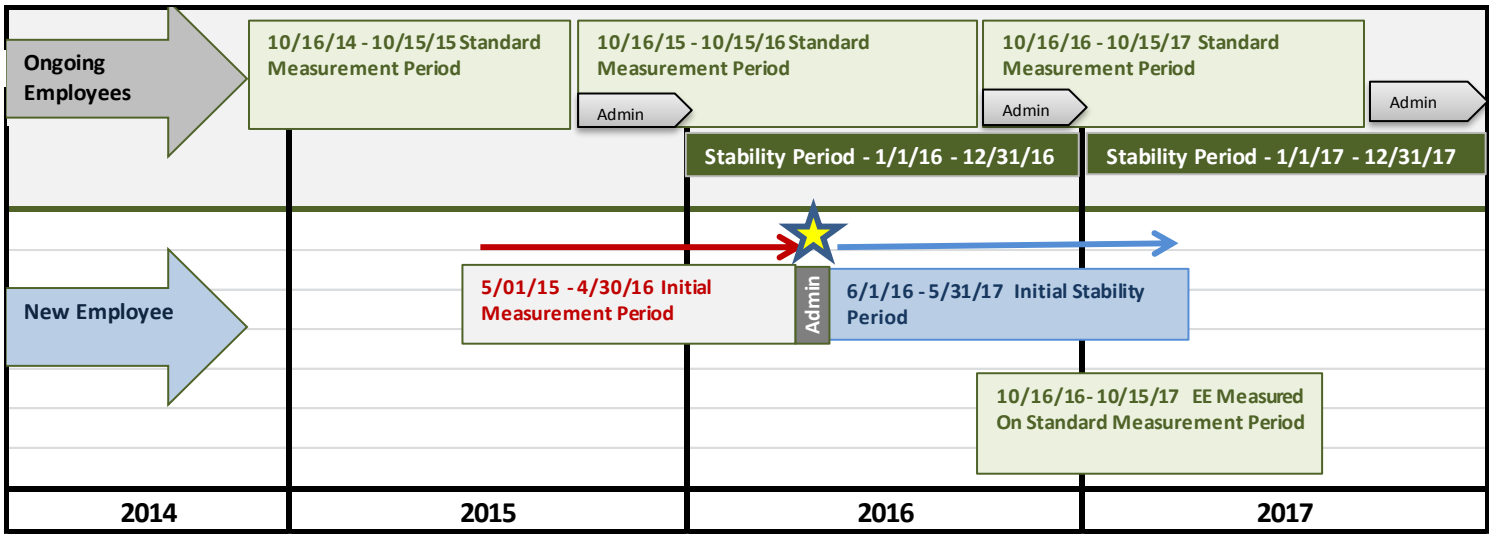


Example 4:

Employee D is a seasonal worker who starts work on May 1, 2015. He will work 35 hours each week during the busy tourist months of May - July. His initial measurement period runs from May 1, 2015, through April 30, 2016. During the administrative period immediately following the initial measurement period, it's determined he works an average of 12 hours per week. While he did work above 30 hours a week during the first three months, he did not average 30 hours during the entire initial look back period, therefore he is not offered coverage during the initial stability period.

Test #1 – First Administrative Period: 5/1/16 – 05/31/16

Test #2 – Ongoing Employee Administrative Period: 10/16/16 – 12/31/16



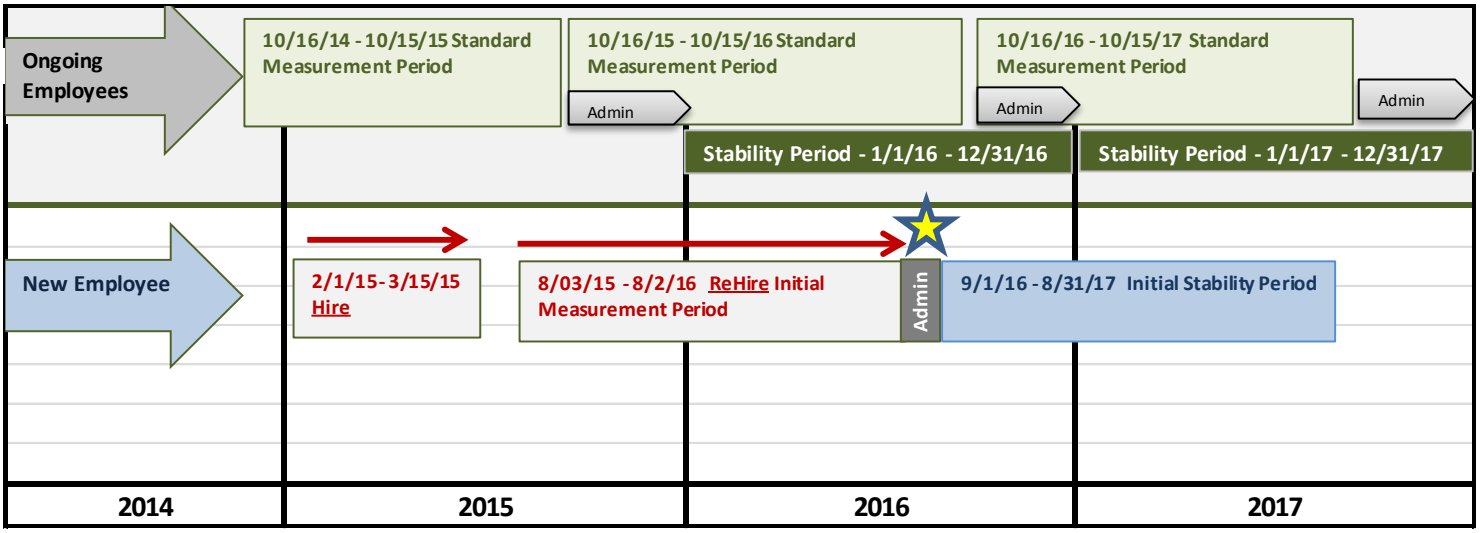
Example 5 (Rehire):

Employee F was hired effective 02/1/2015 to fill a short term assignment lasting six weeks and working an average of 40 hours per week. The assignment was completed on time and ended on March 15, 2015. He was not offered health coverage due to the length of the assignment.

The same agency decided to rehire Employee F effective 8/3/2015 for a similar assignment - a period of 19 weeks from his last day of work. Employees returning after a break in service of 13 weeks or more will be considered to be a new hire. Thus, Employee F will be treated as a new, variable hour employee. His hours per week are anticipated to range between 25 – 40 hours and the assignment is expected to last at least through the December 2015. His hours worked per week would be averaged over the 12 month initial measurement period beginning on his rehire date of 8/3/15.

Conclusion: In this example, the employee's first assignment lasted six weeks. He was rehired 19 weeks from his separation date which is greater than the 13 week threshold for considering a returning employee as a rehire. In this case, the employee would be treated as a new, variable hour employee.

Test #1 – First Administrative Period: 8/3/16 – 08/31/16



Example 6 (Rehire Continuous):

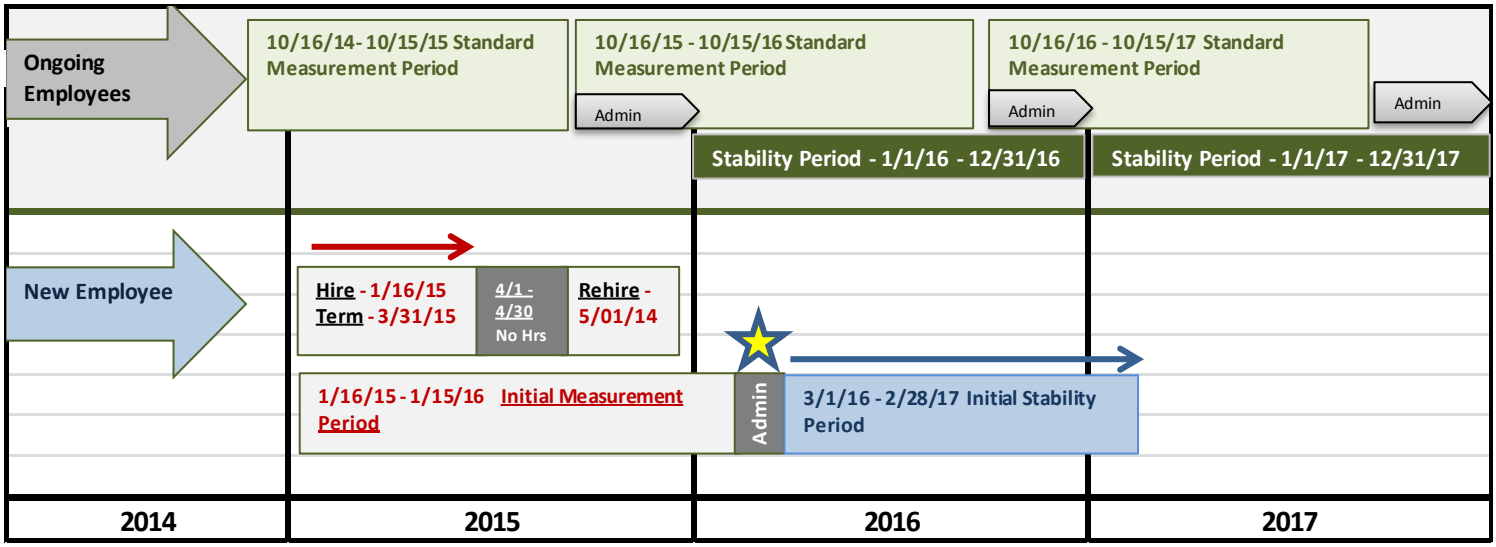
Employee J was hired on 1/16/15 to fill a temporary assignment lasting 10 weeks and working an average of 24 hours per week. He was not offered health coverage due to his part-time status. The assignment ended on March 31, 2015.

The agency rehires Employee J effective 05/1/2015, a period of just over four weeks from his last day on 3/31/15. A four week break in service is within the 13 week threshold for considering a returning employee as a rehire. Therefore, Employee J will be considered a rehire. His hours of work are anticipated to range between 20 – 40 hours for approximately six months.

Employee J is determined to be a variable hour employee; his hours worked per week would be averaged over 12 months beginning on his first hire date of 1/16/15. He would be credited with 0 hours of work from 4/1/15 – 4/30/15.

Conclusion: In this example, the employee's initial assignment was 10 weeks long and he was rehired with the same agency after a four week break which is less than the 13 week rehire threshold. Therefore, he will be treated as a continuous, variable hour rehired employee with hours measured from the initial hire date.

Test #1 – First Administrative Period: 1/16/16 – 02/28/16



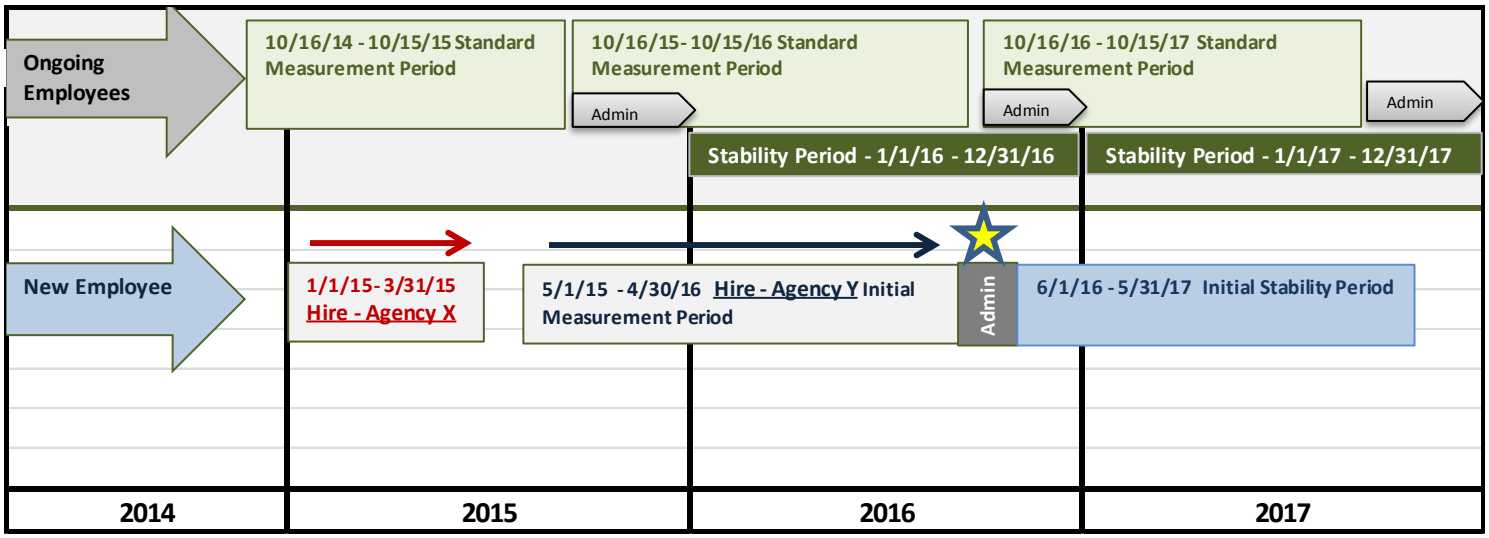
Example 7 (Rehire -Different Agency):

Effective 1/1/15, Employee H was hired to fill a short term assignment lasting three months for

Agency X. During this period, she worked an average of 32 hours each week. The assignment completed on time and ended on March 31, 2015. She was not offered health coverage due to the length of the assignment. She was referred for another temporary position with **Agency Y**. Her start date with **Agency Y** was May 1, 2015. She accepted the variable hour position with work hours to range between 20 - 40 hours for approximately 6 months. Her hours worked per week would be averaged over the 12 month initial measurement period beginning on her hire date with **Agency Y** of 5/1/15.

Conclusion: In this example, the employee's first assignment was with **Agency X**. She was later hired for a different assignment with Agency Y. As state agencies are separate entities for the purposes of ACA, she will be treated as a new, variable hour employee with **Agency Y**.

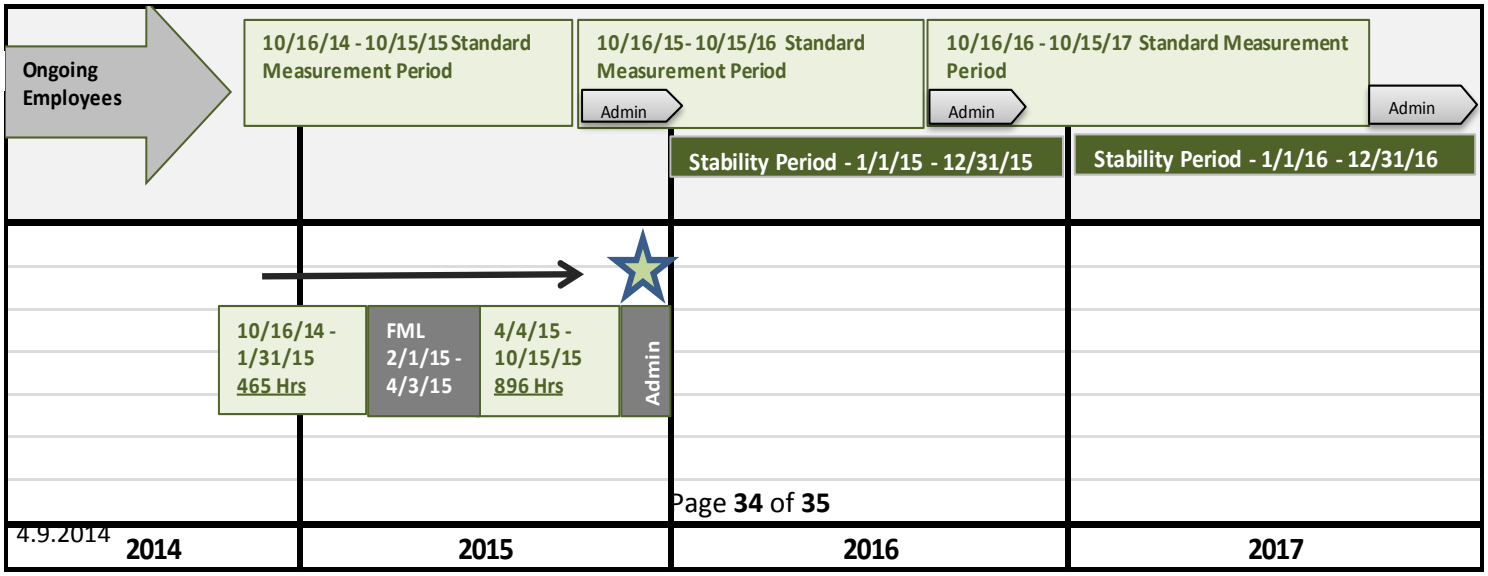
Test #1 – First Administrative Period: 5/1/16 – 5/31/16



Example 8 (Protected Leave - Extract FML Weeks):

Employee A was hired with Agency X as a variable hour employee on January 2, 2014. He was employed through the standard 12 month measurement / look back period beginning October 16, 2014 and ending October 15, 2015. From February 1, 2015 – April 3, 2015 Employee A was out on unpaid Family and Medical Leave. During the 2 month period, Employee A worked no hours and received no compensation.

One way to calculate whether Employee A averaged 30 hours per week during the measurement period is to calculate Employee A's total hours worked from October 16,2014 to January 31, 2015 and from April 4, 2015 to October 15, 2015 (excluding from the calculation the nine weeks that Employee A was out on protected FMLA leave). The total number of hours worked for these two periods should be divided by 43 weeks to receive the correct calculation for whether Employee A averaged 30 hours per week during the measurement period, excluding the nine weeks out on protected leave.



Employee A's total hours worked (465 + 896) will be averaged over the 43 weeks he worked during the standard measurement/look back period. He will be offered medical coverage if he averages 30+ hours per week over the period.

Example 9 Protected Leave - Credit Equal Hours:

Same facts as above. The second way to calculate whether Employee A averaged 30 hours per week during the measurement period is to credit Employee A with hours of service from February 1, 2015 to April 3, 2015 at a rate equal to Employee A's average weekly rate during the rest of the measurement period. Therefore, if Employee A averaged 31 hours per week from October, 16 2014 to January 31, 2015 and from April 4 , 2015 to October 15, 2016, then you would add 279 hours (31 hours times 9 weeks) to the total of hours worked for your calculation, using the full 12 months of the measurement period.